

SENATE BILL 451

Q4, R2

1lr1433

By: **Senators Manno and Miller**

Introduced and read first time: February 4, 2011

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Transportation – Sales and Use Tax – Funding for Mass Transit Projects**

3 FOR the purpose of requiring the Comptroller to distribute certain sales and use tax
4 revenues collected on the sale of motor fuel to the Mass Transit Facility
5 Revenue Account of the Transportation Trust Fund and the Transportation
6 Trust Fund; repealing an exemption under the sales and use tax for the sale of
7 motor fuel that is subject to the motor fuel tax; providing an exemption under
8 the sales and use tax for certain motor fuel that is exempt from the motor fuel
9 tax; altering the rate of the motor carrier tax to include a certain per gallon
10 sales and use tax equivalent rate; altering a credit allowed against the motor
11 carrier tax to include certain sales and use tax that the motor carrier paid on
12 motor fuel bought in the State; establishing a sales and use tax rate for certain
13 motor fuel; providing for the computation of a sales and use tax on certain motor
14 fuel; allowing a certain exception; altering certain exemptions under the sales
15 and use tax relating to motor fuel; requiring a buyer to pay the sales and use
16 tax on certain sales of motor fuel that are exempt from the tax and allowing the
17 buyer to file a claim for refund of the tax paid; providing for the prepayment of
18 the sales and use tax for motor fuel by a person who is required to pay the
19 motor fuel tax for that fuel and for the collection of the amounts prepaid from
20 certain purchasers of the motor fuel; requiring certain persons to file certain
21 reports or provide certain invoices or other evidence of collection of the
22 prepayment amounts; establishing a certain prepayment rate for a certain
23 period; authorizing the Comptroller to determine certain prepayment rates;
24 creating a Mass Transit Facility Revenue Account in the Transportation Trust
25 Fund; specifying the purpose of the Account; establishing the composition of the
26 Account; providing for the disbursement of funds from the Account; providing
27 for the payment of certain taxes on certain tax-paid motor fuel held as of a
28 certain date; defining a certain term; and generally relating to certain taxes and
29 the distribution of certain tax revenues.

30 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Tax – General
 2 Section 2–1302.2, 9–204, 9–214, 11–104(b), 11–208(c), 11–221(a), 11–301,
 3 11–601(b)(3), and 13–901(g)
 4 Annotated Code of Maryland
 5 (2010 Replacement Volume)

6 BY adding to
 7 Article – Tax – General
 8 Section 11–101(n–1), 11–104(a–1), 11–408(d), and 11–410
 9 Annotated Code of Maryland
 10 (2010 Replacement Volume)

11 BY repealing and reenacting, with amendments,
 12 Article – Transportation
 13 Section 3–216(c)
 14 Annotated Code of Maryland
 15 (2008 Replacement Volume and 2010 Supplement)

16 BY adding to
 17 Article – Transportation
 18 Section 7–309
 19 Annotated Code of Maryland
 20 (2008 Replacement Volume and 2010 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Tax – General**

24 2–1302.2.

25 (A) After making the distributions required under §§ 2–1301 through
 26 2–1302.1 of this subtitle, **THE COMPTROLLER MONTHLY SHALL:**

27 (1) **DISTRIBUTE 25% OF THE REVENUE FROM THE SALES AND USE**
 28 **TAX COLLECTED ON THE SALE OF MOTOR FUEL IN MONTGOMERY COUNTY,**
 29 **PRINCE GEORGE’S COUNTY, AND BALTIMORE CITY TO THE MASS TRANSIT**
 30 **FACILITY REVENUE ACCOUNT IN THE TRANSPORTATION TRUST FUND; AND**

31 (2) **DISTRIBUTE THE REMAINING REVENUE FROM THE SALES AND**
 32 **USE TAX COLLECTED ON THE SALE OF MOTOR FUEL TO THE TRANSPORTATION**
 33 **TRUST FUND.**

34 (B) **AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2–1301**
 35 **THROUGH 2–1302.1 OF THIS SUBTITLE AND SUBSECTION (A) OF THIS SECTION,**

1 the Comptroller shall pay into the Transportation Trust Fund established under §
2 3-216 of the Transportation Article:

3 (1) for each fiscal year beginning before July 1, 2013, 5.3% of the
4 remaining sales and use tax revenue; and

5 (2) for each fiscal year beginning on or after July 1, 2013, 6.5% of the
6 remaining sales and use tax revenue.

7 9-204.

8 (A) For each type of motor fuel used in the operation of a commercial motor
9 vehicle on a highway in this State, the motor carrier tax rate is **THE SUM, FOR EACH**
10 **GALLON OF FUEL USED, OF:**

11 (1) the motor fuel tax rate for that type of motor fuel in effect when
12 the return period begins[, for each gallon of motor fuel used]; **AND**

13 (2) **THE PER GALLON SALES AND USE TAX EQUIVALENT RATE FOR**
14 **THAT TYPE OF MOTOR FUEL, AS DETERMINED BY THE COMPTROLLER, IN**
15 **EFFECT WHEN THE RETURN PERIOD BEGINS.**

16 (B) (1) **FOR EACH TYPE OF MOTOR FUEL, ON OR BEFORE THE 15TH**
17 **DAY OF MARCH, JUNE, SEPTEMBER, AND DECEMBER OF EACH YEAR, THE**
18 **COMPTROLLER SHALL DETERMINE A PER GALLON SALES AND USE TAX**
19 **EQUIVALENT RATE TO BE EFFECTIVE FOR THE CALENDAR QUARTER BEGINNING**
20 **ON THE FIRST DAY OF THE FOLLOWING MONTH.**

21 (2) **THE PER GALLON SALES AND USE TAX EQUIVALENT RATE**
22 **SHALL BE BASED ON THE STATE SALES AND USE TAX IMPOSED ON THE SALE OF**
23 **A GALLON OF THAT TYPE OF MOTOR FUEL, USING THE ARITHMETIC AVERAGE**
24 **SELLING PRICE, EXCLUDING SALES TAX, FOR THE PRECEDING CALENDAR**
25 **QUARTER AS DETERMINED BY THE COMPTROLLER.**

26 9-214.

27 (a) A motor carrier may claim a credit against the motor carrier tax to the
28 extent of the motor fuel tax **AND THE SALES AND USE TAX** that the motor carrier paid
29 on motor fuel bought in the State.

30 (b) If the credit allowed under subsection (a) of this section for a return
31 period exceeds the motor carrier tax due in the period, then, in accordance with
32 regulations of the Comptroller, the motor carrier may:

33 (1) apply the excess credit to the motor carrier tax due within the next
34 2 years; or

1 (2) apply for a refund of the excess credit under § 13-901 of this
2 article.

3 11-101.

4 **(N-1) "VENDING OR OTHER SELF-SERVICE MACHINE" INCLUDES A**
5 **GASOLINE OR SPECIAL FUEL PUMP AT A RETAIL SERVICE STATION.**

6 11-104.

7 **(A-1) THE SALES AND USE TAX RATE FOR THE SALE OF MOTOR FUEL IS 4%**
8 **OF THE TAXABLE PRICE OF THE MOTOR FUEL.**

9 (b) **(1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
10 **SUBSECTION, IF** a retail sale of tangible personal property or a taxable service is
11 made through a vending or other self-service machine, the sales and use tax rate is
12 6%, applied to 94.5% of the gross receipts from the vending machine sales.

13 **(2) IF A RETAIL SALE OF MOTOR FUEL IS MADE THROUGH A**
14 **VENDING OR OTHER SELF-SERVICE MACHINE, THE SALES AND USE TAX RATE IS**
15 **4%, APPLIED TO 96.25% OF THE GROSS RECEIPTS FROM THE VENDING MACHINE**
16 **SALES OF MOTOR FUEL.**

17 11-208.

18 (c) The sales and use tax does not apply:

19 (1) to a sale of an aircraft, motor vehicle, railroad rolling stock, or
20 vessel that is used principally to cross State lines in interstate or foreign commerce;

21 (2) to a sale of a replacement part or other tangible personal property,
22 **NOT INCLUDING MOTOR FUEL**, to be used physically in, on, or by a conveyance
23 described in item (1) of this subsection; or

24 (3) except for a rental, to a sale of a motor vehicle, other than a house
25 or office trailer, that will be titled or registered in another state.

26 11-221.

27 (a) The sales and use tax does not apply to:

28 (1) a sale of an admission by a person whose gross receipts from the
29 sale are subject to the admissions and amusement tax;

1 (2) a sale of a communication service, other than a taxable service,
 2 rendered by a person whose charge for a communication service is or would be subject
 3 to the federal excise tax as described in § 4251 of the Internal Revenue Code in effect
 4 on July 1, 1979;

5 (3) a [sale] USE of a motor fuel that is subject to [the motor fuel tax
 6 or] the motor carrier tax;

7 (4) A SALE OF A MOTOR FUEL THAT IS EXEMPT FROM THE MOTOR
 8 FUEL TAX UNDER § 9-303(C) OF THIS ARTICLE;

9 [(4)] (5) except for a rental, a sale of a motor vehicle, other than a
 10 house or office trailer, that is subject to the motor vehicle excise tax under § 13-809 or
 11 § 13-811 of the Transportation Article;

12 [(5)] (6) a lease of a motor vehicle that is leased for a period of at
 13 least 1 year;

14 [(6)] (7) a rental of a motion picture, motion picture trailer, or
 15 advertising poster for display on theater premises by a person whose gross receipts
 16 from the activity related to the rental is subject to the admissions and amusement tax;
 17 or

18 [(7)] (8) except for a rental, a sale of a vessel that is subject to the
 19 excise tax under § 8-716 of the Natural Resources Article.

20 11-301.

21 The sales and use tax is computed on:

22 (1) the taxable price of each separate sale;

23 (2) if a combined sale is made, the combined taxable price of all retail
 24 sales on the same occasion by the same vendor to the same buyer; or

25 (3) if retail sales of tangible personal property or a taxable service are
 26 made through vending or other self-service machines:

27 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS ITEM, 94.5%
 28 of the gross receipts from the retail sales; OR

29 (II) 96.25% OF THE GROSS RECEIPTS FROM THE RETAIL
 30 SALES OF MOTOR FUEL.

31 11-408.

1 (D) (1) EXCEPT AS PROVIDED BY THE COMPTROLLER BY
2 REGULATION AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
3 SUBSECTION, IF THE SALE OF MOTOR FUEL IS EXEMPT UNDER THIS TITLE:

4 (I) THE SALES AND USE TAX ON THE SALE OF THE MOTOR
5 FUEL SHALL BE PAID WHEN THE SALE IS MADE; AND

6 (II) THE BUYER WHO PAYS THE SALES AND USE TAX MAY
7 FILE A CLAIM FOR A REFUND WITH THE COMPTROLLER.

8 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO
9 MOTOR FUEL THAT IS EXEMPT FROM THE MOTOR FUEL TAX.

10 11-410.

11 (A) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A
12 PERSON WHO IS REQUIRED TO PAY TO THE COMPTROLLER THE MOTOR FUEL
13 TAX ON MOTOR FUEL SHALL PREPAY THE SALES AND USE TAX FOR THAT MOTOR
14 FUEL TO THE COMPTROLLER AS PROVIDED IN THIS SECTION.

15 (2) THE PREPAYMENT OF SALES AND USE TAX FOR MOTOR FUEL
16 REQUIRED UNDER THIS SECTION SHALL BE PAID WHEN THE MOTOR FUEL TAX
17 ON THAT MOTOR FUEL IS DUE.

18 (3) (I) A PERSON REQUIRED TO PREPAY THE SALES AND USE
19 TAX FOR MOTOR FUEL SHALL REPORT AND PAY THE PREPAYMENT AMOUNTS TO
20 THE COMPTROLLER FOR THE PERIOD IN WHICH THE MOTOR FUEL BECOMES
21 SUBJECT TO THE MOTOR FUEL TAX.

22 (II) THE REPORT REQUIRED UNDER THIS PARAGRAPH
23 SHALL BE IN THE FORM REQUIRED BY THE COMPTROLLER AND SHALL INCLUDE
24 THE INFORMATION REQUIRED BY THE COMPTROLLER.

25 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
26 SUBSECTION:

27 (I) IF A PERSON WHO IS REQUIRED TO PREPAY THE SALES
28 AND USE TAX TO THE COMPTROLLER FOR MOTOR FUEL SELLS THE MOTOR
29 FUEL, THE PERSON SHALL COLLECT THE AMOUNT OF THE PREPAYMENT FROM
30 THE PURCHASER; AND

31 (II) ON EACH SUBSEQUENT SALE OF MOTOR FUEL FOR
32 WHICH THE SALES AND USE TAX HAS BEEN PREPAID UNDER THIS SECTION,

1 EACH SELLER SHALL COLLECT THE AMOUNT OF THE PREPAYMENT FROM THE
2 PURCHASER.

3 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A
4 SELLER WHO MAKES A RETAIL SALE OF THE MOTOR FUEL.

5 (3) EACH SELLER OTHER THAN A SELLER WHO MAKES A RETAIL
6 SALE OF THE MOTOR FUEL SHALL PROVIDE THE PURCHASER WITH AN INVOICE
7 FOR, OR OTHER EVIDENCE OF, THE COLLECTION OF THE PREPAYMENT
8 AMOUNTS WHICH SHALL BE SEPARATELY STATED.

9 (c) (1) A PERSON WHO HAS PREPAID THE SALES AND USE TAX TO THE
10 COMPTROLLER UNDER SUBSECTION (A) OF THIS SECTION OR HAS PAID THE
11 PREPAYMENT TO A SELLER UNDER SUBSECTION (B) OF THIS SECTION IS
12 ALLOWED A CREDIT:

13 (i) IF THE PERSON MAKES A RETAIL SALE OF THE MOTOR
14 FUEL, AGAINST THE PERSON'S SALES AND USE TAX LIABILITY FOR THE PERIOD
15 IN WHICH THE PERSON MAKES A RETAIL SALE OF THE MOTOR FUEL; OR

16 (ii) IF THE PERSON SUBSEQUENTLY USES THE MOTOR FUEL,
17 AGAINST THE PERSON'S SALES AND USE TAX LIABILITY FOR THE PERIOD IN
18 WHICH THE PERSON USES THE MOTOR FUEL.

19 (2) TO BE ENTITLED TO THE CREDIT, THE PERSON WHO MAKES A
20 RETAIL SALE OF THE MOTOR FUEL OR WHO USES THE MOTOR FUEL SHALL
21 RETAIN FOR INSPECTION BY THE COMPTROLLER ANY RECEIPTS, INVOICES, OR
22 OTHER DOCUMENTS SHOWING THE AMOUNT OF SALES AND USE TAX PREPAID TO
23 A SELLER, TOGETHER WITH THE EVIDENCE OF PAYMENT.

24 (d) (1) (i) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS
25 SUBSECTION, THE SALES AND USE TAX PREPAYMENT REQUIRED UNDER THIS
26 SECTION IS AN AMOUNT PER GALLON OF MOTOR FUEL AS ESTABLISHED BY THE
27 COMPTROLLER.

28 (ii) THE COMPTROLLER SHALL DETERMINE THE SALES AND
29 USE TAX PREPAYMENT RATE FOR EACH FISCAL YEAR BASED ON THE STATE
30 SALES AND USE TAX RATE APPLIED TO THE ARITHMETIC AVERAGE RETAIL
31 SELLING PRICE, EXCLUDING THE SALES AND USE TAX, OF GASOLINE IN THE
32 STATE, AS DETERMINED BY THE COMPTROLLER FOR THE CALENDAR YEAR
33 THAT ENDED PRIOR TO THE BEGINNING OF THE FISCAL YEAR.

34 (iii) THE PREPAYMENT RATE SHALL BE ROUNDED TO THE
35 NEAREST HALF CENT FOR EACH GALLON.

1 3-216.

2 (c) (1) There shall be maintained in the Transportation Trust Fund one or
3 more sinking fund accounts to which shall be credited and from which shall be paid,
4 from the proceeds of the taxes levied and imposed for that purpose or from any other
5 funds of the Department, amounts sufficient at all times to meet the debt service on
6 all bonds of prior issues and consolidated transportation bonds from time to time
7 outstanding and unpaid.

8 (2) (i) The Gasoline and Motor Vehicle Revenue Account, **THE**
9 **MASS TRANSIT FACILITY REVENUE ACCOUNT**, the Driver Education Account, and
10 the Motorcycle Safety Program Account shall be maintained in the Transportation
11 Trust Fund.

12 (ii) In each fiscal year, the Department shall budget from
13 federal funds available to the Department, other funds in the Transportation Trust
14 Fund, and any other funds available to the Department, an amount sufficient to fund
15 projects and programs determined by the Secretary to be necessary to achieve the
16 bicycle and pedestrian transportation goals identified for the fiscal year under Title 2,
17 Subtitle 6 of this article.

18 **7-309.**

19 (A) **THERE IS A MASS TRANSIT FACILITY REVENUE ACCOUNT IN THE**
20 **TRANSPORTATION TRUST FUND.**

21 (B) **THE PURPOSE OF THE ACCOUNT IS TO PROVIDE FUNDING FOR NEW**
22 **MASS TRANSIT FACILITIES SPECIFIED IN A TRANSIT PLAN IN MONTGOMERY**
23 **COUNTY, PRINCE GEORGE'S COUNTY, AND BALTIMORE CITY.**

24 (C) **AFTER DEDUCTIONS PROVIDED BY LAW, REVENUES COLLECTED**
25 **FROM THE SALES AND USE TAX ON MOTOR FUEL UNDER § 2-1302.2(A)(1) OF**
26 **THE TAX - GENERAL ARTICLE SHALL BE CREDITED TO THE MASS TRANSIT**
27 **FACILITY REVENUE ACCOUNT.**

28 (D) **FUNDS FOR NEW MASS TRANSIT FACILITY PROJECTS IN**
29 **MONTGOMERY AND PRINCE GEORGE'S COUNTIES, AND BALTIMORE CITY FROM**
30 **THE ACCOUNT SHALL BE DISBURSED BASED ON THE PERCENTAGE OF**
31 **REVENUES RECEIVED FROM MONTGOMERY AND PRINCE GEORGE'S COUNTIES,**
32 **AND BALTIMORE CITY.**

33 SECTION 2. AND BE IT FURTHER ENACTED, That each person holding
34 tax-paid motor fuel, excluding aviation fuel, for sale at the start of business on July 1,
35 2011, shall compile and file an inventory of the motor fuel held at the close of business
36 on June 30, 2011, and remit within 30 days:

- 1 (1) any additional motor fuel tax that is due on the motor fuel; and
- 2 (2) the prepayment of the sales and use tax for that motor fuel as
- 3 required under § 11-410 of the Tax – General Article, as enacted by Section 1 of this
- 4 Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect

6 July 1, 2011.